

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

75-7700

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B

GEORGE HANZIMANOLIS,

Plaintiff-Appellant,

-against-

MICHAEL J. CODD, as Police Commissioner
of the City of New York,

Defendant-Appellee.

P/S

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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CERTIFIED COPY OF DOCKET ENTRIES

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PLAINTIFFS										DEFENDANTS				

MANZIMANOLIS GEORGE

COPPO, MICHAEL J. as Police Commiss
of the CITY OF NEW YORK

CAUSE

Pltff. Claims his Constitutional rights were
violated-he was dismissed from his N.Y. City
Civil Service position without equal protection
of laws and without due process of law.

ATTORNEYS

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FEB 28 1975

FILING FEES PAID

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CERTIFIED COPY OF DOCKET ENTRIES

75 CIV 1011

JUDGE WEINFELD

DATE	NR.	PROCEEDINGS
2-23-75		Filed Complaint and Issued Summons.
3-6-75		Filed Summons with Marshal's Return. Served: Lt. Paul Breman Police Comm. M.J. Codd by. Lt. Paul Breman on 3-3-75.
7-10-75		Filed defts affdvt & notice of motion to dismiss the amended complt. Ret. 9-19-75
7-10-75		Filed defts memo of law in support of motion to dismiss.
07-11-75		Filed notice of reassignment to Judge Weinfeld. m/n
07-11-75-6-		Filed stip. and order ext. deft's time to answer to 7-9-75--Brieant, J.
09-17-75-7-		Filed stip. and order adj. deft. motion to dismiss to 9-16-75 --Weinfeld, J.
09-26-75 -8-		Filed pltf, amende complaint
11-12-75-9-		Filed Opinion # 43379 The defendant's motion to dismiss the complaint is granted --Weinfeld, J. m/n
11-13-75 -10-		Filed pltf. affdvt. in opposition to motion to dismiss the complaint
11-13-75-11-		Filed pltf. supplemental affdvt. in opposition to dismiss
11-17-75 -12-		Filed JUDGMENT Ordered that deft. have judgment against the pltf. dismissing the complaint-clerk m/n
12-16-75-13-		Filed pltf. notice of appeal to the U.S.C.A. for the Second Circuit from order entered on 11-17-75. Noted copy to W. Bernard Bickland
12-29-75 -14-		Filed bond #8931406 for undertaking for cost on appeal in the amount of \$250.00 by Fidelity and Deposit Co.
01-22-76-15		Filed notice of original record on appeal has been certified and transmitted to the to the U.S.C.A. on 1-22-76.

A TRUE COPY

RAYMOND F. BURCHARDT, Clerk

By

Deputy Clerk

2/7/76
GJM

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE HANZIMANOLIS,

Plaintiff,

-against-

MICHAEL J. CODD, as Police Commissioner
of the CITY OF NEW YORK,

Defendant.

-----X

AMENDED COMPLAINT

75CLV 1011

Plaintiff, by his attorney, SAMUEL LORENZO, Esq.,
complaining of the defendant, respectfully shows to this Court
and alleges as follows, upon information and belief:

FIRST: Plaintiff is a citizen of the City of New
York and the State of New York. The defendant is the Police
Commissioner of the City of New York, whose main office is
located in the City of New York, State of New York.

SECOND: This action arises under title 42, Sections
1343, 1983 and 1985 and this Court has jurisdiction of the action
under title 28 of the U.S. Code, Sections 1331, 1332 and 1343.

THIRD: That prior to November 8, 1972, the plain-
tiff herein was a patrolman employed by the Police Department
of the City of New York for approximately 7 years prior to the
acts complained of herein.

FOURTH: That at all of the times herein, the Police
Commissioner of the City of New York, the defendant herein, and
his predecessors were the Commissioners of the Police Department
of the City of New York, and acting in that capacity.

FIFTH: On August 9, 1971, the plaintiff was charged
by the Police Department of the City of New York with 5 viola-
tions of the Rules and Procedures of the Police Department of
the City of New York. The exact charges are as follows:

AMENDED COMPLAINT

"TO THE POLICE COMMISSIONER:

I hereby charge Ptl. Hanzimanolis, George -
12732 - 26th Precinct with violation of the
Rules and Procedures

SPECIFICATIONS

in that:

1. Said Patrolman Hanzimanolis did knowingly and wrongfully engage actively in an occupation, other than his employment in the Police Department, in February of 1970, without written authorization from the Police Commissioner, in that he did own and operate a newspaper delivery service.

(R. & P. 2/47.0)

2. Said Patrolman Hanzimanolis, did knowingly and wrongfully register a motor vehicle with the State of New Jersey, on August 21st, 1970, using the address of 19 Harbor Way, East Keanesburg, New Jersey, when at the time of this registration he was not a resident of said address.

(R. & P. 2/37.1; 27/3.1)

3. Said Patrolman Hanzimanolis, did knowingly and wrongfully, and without just cause, make false statements, on September 24, 1970, during an official homicide investigation being conducted by the New York State Police.

(R. & P. 2/37.1; 27/3.1)

4. Said Patrolman Hanzimanolis, being lawfully married to Noreen Hanzimanolis, did on September 21st, 1970, at the Parkway Motel, Elmsford, New York, knowingly and wrongfully cohabit with one, Nina Shapiro, a married female, not his wife.

(R. & P. 2/37.1; 27/3.1)

5. Said Patrolman Hanzimanolis, did knowingly and wrongfully give evasive answers during an official department interview held on June 17th, 1971, in that he was asked the following questions: If he had registered at the Parkway Motel, Elmsford, New York, on September 21st, 1970 under the name of Mr. and Mrs. L. Lewis, using license plate #SRX 741, if he had never registered at said motel or any motel in the vicinity of said motel, using the name L. Lewis; if between the period of January 19th and September 21st, 1970, if he had registered at said motel using the name of L. Lewis; his answers to these questions, in the order they were asked were, "I don't recall"; "It's quite possible"; and "I don't recall".

(R. & P. 2/37.1; 27/3.1)

AMENDED COMPLAINT

SIXTH: On May 12, 1972, the plaintiff was suspended from all duties as a patrolman without pay pending a Departmental Hearing of the charges.

SEVENTH: On June 21, 1972 and July 11, 1972, a Departmental Hearing was held by the Police Department before the HON. LOUIS L. STUTMAN, Deputy Commissioner of Trials for the Police Department of the City of New York.

EIGHTH: On November 3, 1972, Deputy Commissioner STUTMAN issued his Findings, Rationale and Recommendations in the form of a Memorandum to the Police Commissioner. Said Memorandum, including the Findings, Rationale and Recommendations are as follows:

"MEMORANDUM

A trial was completed before me on July 11, 1972.

On September 21, 1970, Dr. Sidney Shapiro was found dead in his automobile in Westchester County apparently the victim of a homicide by gunshot. Anonymous telephone calls to law enforcement agencies alleged that a New York City patrolman was friendly with a doctor's wife and that the patrolman had hired someone to kill Dr. Shapiro. The respondent was identified as the above patrolman. He is legally separated from his wife.

On September 24, 1970 the respondent in the presence of investigators of this department told representatives of the New York State Police that he had been having an affair with Mrs. Nina Shapiro at the time of the death of her husband. He further stated that on the date of the homicide he had gone to a motel with Mrs. Shapiro and registered under the name of Mr. and Mrs. L. Lewis at Parkway Motel. They had gone to motels on other occasions.

On June 8th and June 17th, 1971 the respondent was questioned by representatives of the Internal Affairs Division of this department. He then said that the statement he made to the New York State police was false. He was specifically asked if he had registered at a motel on September 21, 1970 under the name of Mr. and Mrs. L. Lewis and he denied it. The respondent was asked whether he had registered on 27 different dates between January 19, 1970 and September 29, 1970 mostly at the Parkway Motel in Elmsford, New York using the name Mr. and Mrs. L. Lewis. The respondent's reply was "I don't recall."

AMENDED COMPLAINT

The Department produced a handwriting expert who examined the motel registration cards and department records which contained respondent's signature and handwriting. It was his opinion that the respondent signed the cards. Where block letters were used, the expert testified that the respondent made them. Respondent did not offer any proof to show that the cards were not in his handwriting.

The respondent conceded that he had made a statement to the New York State Police that he had been at a motel with Mrs. Shapiro on September 21, 1971 the day of the homicide but contends that statement was made under pressure.

The respondent was separated from his wife for three years prior to the date of these specifications which are dated August 16, 1971.

During the course of this investigation, it was also disclosed that the respondent had a newspaper delivery service and had not obtained permission from the Police Commissioner to engage in this employment. It was also disclosed that he had registered a motor vehicle in the State of New Jersey when actually he was not a resident of that State.

FINDINGS

I find that the statements of the respondent that he could not recall whether he had registered at a motel with Mrs. Shapiro on 27 occasions were evasive and false.

I find that his original statement to the State Police that he had cohabited with Mrs. Shapiro on September 21, 1970 was true.

The respondent was married at the time that he had relations with a married woman on numerous occasions.

There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro but apparently there is no proof that he was responsible for his death.

I find the respondent NOT GUILTY of Specification No. 3, and GUILTY of Specifications Nos. 1, 2, 4 and 5.

The respondent has 7 years of service in the department without any prior record.

AMENDED COMPLAINT

RECOMMENDATION

I recommend that the respondent be DISMISSED from the Police Service of the City of New York.

s/ LOUIS L. STUTMAN
LOUIS L. STUTMAN,
Deputy Commissioner
In Charge of Trials."

NINTH: On November 9, 1972, the Police Commissioner of the City of New York, PATRICK V. MURPHY, predecessor of the defendant herein, issued a Final Order of Dismissal, permanently dismissing the plaintiff from his employment as patrolman with the Police Department of the City of New York.

TENTH: The aforementioned Order of Dismissal was pre-deciated on the Findings, Rationale and Recommendation of Deuply Police Commissioner Stutman hereinbefore recited.

ELEVENTH: That as part of Deputy Commissioner Stutman's Findings, the following question is made:

"There is an obvious suspicion that the respondent herein was involved in the homicide of Dr. Shapiro, but apparently there is no proof that he was responsible for his death."

TWELFTH: That although the plaintiff herein was brought up on five separate minor infractions of the Rules and Procedures of the Police Department of the City of New York, he was in fact, tried for the homicide of Dr. Shapiro and found guilty of that homicide by a Department Hearing and dismissed from his position as patrolman with the Police Department of the City of New York.

THIRTEENTH: That although the plaintiff was never charged with the homicide of Dr. Shapiro, there was a specific finding by the Deputy Commissioner, recited hereinabove, finding him "suspicious" of the death of Dr. Shapiro, and causing his dismissal from the Police Department.

AMENDED COMPLAINT

FOURTEENTH: That at the time of the Departmental Hearing, the plaintiff was represented at the Hearing by one HAROLD B. FONER, Esq., an attorney from Brooklyn, New York.

FIFTEENTH: That at the time of the Hearing, the plaintiff's attorney, HAROLD B. FONER, Esq., entered into a disposition with the Hearing Officer of all of the charges, which disposition was to allow the plaintiff to plead guilty to said charges and his only punishment would be a thirty day suspension from the job without pay.

SIXTEENTH: That at the time of the Departmental Hearing, the plaintiff, in fact, pleaded guilty to the charges but subsequent thereto, the Hearing Officer arbitrarily refused to complete the disposition which was agreed to, without reason or cause stated on the record.

SEVENTEENTH: Thereafter, the plaintiff had to withdraw his plea of guilty and proceed with the Hearing as a result of which he was dismissed from the Police force.

EIGHTEENTH: That the disposition arrived at with Deputy Commissioner Stutman, who was the Hearing Officer, which the Hearing Officer refused to complete is a clear indication of the minor offenses which the plaintiff had been charged with by the Police Department.

NINETEENTH: That the Police Department of the City of New York, used the aforementioned charges and resulting hearing as a subterfuge, a deception and artificial justification for the discharge of the plaintiff from his Civil Service position, all under color of law.

TWENTIETH: That in fact, the plaintiff was discharged from his Civil Service position because the Police Department suspected he was involved in the homicide of Dr. Shapiro.

AMENDED COMPLAINT

TWENTY-FIRST: That by trying the plaintiff in a Departmental Hearing for the homicide without charging him with same and without jurisdiction of same, the defendant violated the plaintiff of his rights, privileges and immunities secured by the Constitution and Laws of the United States under color of law.

TWENTY-SECOND: That by dismissing the plaintiff from his Civil Service position as Patrolman of the Police Department of the City of New York, the plaintiff was wrongfully deprived of his rights, privileges and immunities secured by the Constitution and Laws of the United States, under color of law.

TWENTY-THIRD: That by clothing his actions of dismissing the plaintiff in a blanket of infractions of the ordinances, regulations and Rules and Procedures of the Police Department of the City of New York, the defendant wrongfully acted under color of law in depriving the plaintiff of his Civil Service position, in complete derogation of the Constitution and Laws of the United States.

TWENTY-FOURTH: That by dismissing the plaintiff from his position, the defendant, in effect, denied to the plaintiff his rights, privileges and immunities under the 5th, 8th and 14th amendments of the Constitution of the United States.

TWENTY-FIFTH: Plaintiff alleges that as the direct consequences and results of the acts of the defendants hereinabove complained of, plaintiff was deprived of his liberties since his dismissal from the Police Department, November 9, 1972, up to the present time.

TWENTY-SIXTH: That plaintiff has exhausted his remedies under the New York State Law.

WHEREFORE, plaintiff respectfully prays that this Court will enter judgment for the plaintiff as follows:

AMENDED COMPLAINT

1. Directing the defendant MICHAEL J. CODD, Police Commissioner of the City of New York to reinstate the plaintiff to his position as Patrolman with the Police Department of the City of New York, nunc pro tunc as of November 9, 1972, together with all rights and privileges thereof;
2. Awarding plaintiff his costs herein;
3. Awarding plaintiff reasonable attorney's fees.

Yours, etc.
SAMUEL LORENZO, ESQ.

SAMUEL LORENZO
Attorney for Plaintiff
401 Broadway
New York, New York 10013
Tel. #226-6171

DEFENDANT'S NOTICE OF MOTION TO DISMISS AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE HANZIMANOLIS,

Plaintiff,

-against-

MICHAEL J. CODD, as Police
Commissioner of the City
of New York,

Defendant.

NOTICE OF MOTION
TO DISMISS AMENDED
COMPLAINT PURSUANT TO
RULE 12

75 Civ. 1011
Judge Brieant

Motion by:

Defendant

Date, Time and Place
Returnable

September 19, 1975 at
9:30 A.M. in the
United States Courthouse,
Foley Square, New York,
N.Y. before the Hon. Charles
Brieant, Jr., United States
District Judge.

Relief Requested:

An order pursuant to
Rule 12 of the Federal
Rules of Civil Procedure
dismissing the complaint
on the grounds that it is
barred by the doctrine
of res judicata and/or
collateral estoppel.

Dated: July 8, 1975

Respectfully submitted,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, N.Y. 10007
566-8356/2192

By

Kathleen Casely
KATHLEEN CASELY
Assistant Corporation Counsel

TO: CLERK OF THE COURT

Samuel Lorenzo, Esq.
Attorney for Plaintiff
401 Broadway
New York, New York 10013
CA6-6171

AFFIDAVIT OF KATHLEEN CASEY FOR DEFENDANT IN SUPPORT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

GEORGE HANZIMANOLIS,

Plaintiff,

-against-

MICHAEL J. CODD, as Police
Commissioner of the City
of New York,

Defendant.

-----x

AFFIDAVIT IN
SUPPORT OF MOTION
TO DISMISS THE
COMPLAINT

75 Civ. 1011

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

KATHLEEN CASEY, being duly sworn, deposes and
says:

1. I am an Assistant Corporation Counsel in the
Office of W. BERNARD RICHLAND, Corporation Counsel of the
City of New York, attorney for the defendant, and am
familiar with the pertinent facts and circumstances as
set forth hereinafter.

2. I make this affidavit in support of the
defendant's motion to dismiss the complaint herein pursuant
to Rule 12 of the Federal Rules of Civil Procedure on the
grounds that (1) the instant action is barred by the
principles of res judicata, and or collateral estoppel.

3. This suit was commenced by the filing of
a summons and complaint with subsequent services upon the
defendant, Michael J. Codd, as Police Commissioner of the
City of New York, on or about March 3, 1975.

AFFIDAVIT OF KATHLEEN CASEY FOR DEFENDANT IN SUPPORT

4. Pursuant to an agreement between the parties, plaintiff served an amended complaint on or about May 5, 1975 and a further amended complaint on or about June 3, 1975.

5. On or about June 20, 1975 the parties agreed to extend defendant's time to answer or otherwise move with respect to the complaint to July 9, 1975.

6. The complaint alleges that on or about November 9, 1972 after a disciplinary hearing defendant terminated plaintiff's services as a Police Officer in violation of his Constitutional rights.

7. Specifically, plaintiff alleges that he was dismissed because the Police Department suspected he was involved with a homicide.

8. Plaintiff was neither charged with this homicide nor did the hearing officer find him guilty of such charges.

9. Plaintiff commenced an Article 78 proceeding in the New York State Supreme Court, New York County, Special Term, to review the determination of the Police Commissioner. The allegations of that petition are substantially identical to those of the instant complaint.

AFFIDAVIT OF KATHLEEN CASEY FOR DEFENDANT IN SUPPORT

10. On or about April 23, 1973 that proceeding was referred to the Appellate Division, First Department under CPLR 7804(g).

11. The Appellate Division unanimously affirmed the Police Commissioner's order on or about October 9, 1973.

12. Thereupon, plaintiff appealed as of right to the New York State Court of Appeals, this appeal was dismissed by order dated January 9, 1974.

13. Plaintiff then sought leave to appeal to the New York State Court of Appeals. This motion was denied by the Appellate Division, First Department on or about March 14, 1974; a later motion seeking leave to appeal was denied on or about June 5, 1974.

14. Plaintiff then petitioned the Supreme Court of the United States for a writ of certiorari. (A copy of Plaintiff's Brief is annexed hereto as Defendants Exhibit E).

15. In his brief plaintiff, -petitioner there, argued that the Trial Commissioner found petitioner guilty of "suspision", the very same claim plaintiff is setting forth in the instant complaint.

16. The petition for writ of certiorari was denied on November 11, 1974.

AFFIDAVIT OF KATHLEEN CASEY FOR DEFENDANT IN SUPPORT

17. The issue plaintiff seeks to raise here was previously in issue before the New York State Supreme Court, Appellate Division, the New York State Court of Appeals and the Supreme Court of the United States. (Defendant's Exhibits "A" through "E").

18. Plaintiff was neither found guilty of "suspicion", nor dismissed from the Police Department for "suspicion". He was dismissed after a disciplinary hearing for violations of the rules and regulations of the Police Department.

19. This dismissal has been upheld by the New York State Courts, Further, the United States Supreme Court refused to review this determination.

20. It is readily apparent that all of the issues raised in the instant suit were previously considered, on their merits, by a court of competent jurisdiction in another proceeding. Plaintiff's claims were found to be without merit.

21. Accordingly, the Court should dismiss the instant action as barred by the doctrine of res judicata.

22. No request for the same or similar relief as heretofore been made herein.

Verified
July 8 1975

Kathleen Casey
KATHLEEN CASEY

EXHIBIT A TO CASEY AFFIDAVIT - PETITIONER'S
BRIEF - APPELLATE DIVISION, FIRST DEPARTMENT

picion that the respondent was involved in the homicide of Dr. Shapiro", since mere "suspicion" does not and cannot form the basis of an infraction, offense or crime?

3. Was the Departmental hearing held in such an atmosphere of confusion and suspicion so that the Petitioner was denied a fair trial?

4. Was there substantial competent evidence in the record to justify the findings that the Petitioner was guilty of Specifications 1, 2, 4 and 5?

5. Was the dismissal of the Petitioner from the Police Department excessive, cruel and inhuman punishment, even if the Petitioner was guilty of Specifications 1, 2, 4 and 5, since the infractions complained of are of such a minor nature?

ARGUMENT

POINT I

THAT BY MAKING A FINDING THAT THE PETITIONER WAS GUILTY OF "SUSPICION THAT THE RESPONDENT WAS INVOLVED IN THE HOMICIDE OF DR. SHAPIRO", ALTHOUGH THE PETITIONER WAS NOT CHARGED WITH SAME, WAS A VIOLATION OF THE PETITIONER'S DUE PROCESS RIGHTS OF THE UNITED STATES CONSTITUTION AND NEW YORK STATE CONSTITUTION

There is nothing in the charges and specifications, which are set forth at length in the within brief, hereinbefore, to even apprise Petitioner that he should defend or be in a position to defend, with reference to the homicide of Dr. Shapiro

The five charges and Specifications are completely un-

EXHIBIT A TO CASEY AFFIDAVIT - PETITIONER'S
BRIEF - APPELLATE DIVISION, FIRST DEPARTMENT

related to the death of Dr. Shapiro.

Yet, the Commissioner of Trials made a specific finding against the Petitioner with reference to the fact that the Commissioner felt that he was "suspicious" of involvement in said apparent homicide.

This clearly violates the Petitioner's Due Process rights in that he was never given an opportunity to defend himself against this.

In the approximately three years since the death of Dr. Shapiro, no charges have been brought against the Petitioner with reference to same. Petitioner in his petition (p. 10), swears that he had no involvement in the death of Dr. Shapiro. Not one iota of evidence appears anywhere in the record to contradict this.

POINT II

THAT THE FINDING OF THE DEPARTMENT,
THAT PETITIONER WAS GUILTY OF "SUS-
PICION THAT THE RESPONDENT WAS IN-
VOLVED IN THE HOMICIDE OF DR. SHAPIRO"
WAS A FURTHER VIOLATION OF THE PETI-
TIONER'S DUE PROCESS RIGHTS UNDER THE
UNITED STATES CONSTITUTION AND NEW YORK
STATE CONSTITUTION IN THAT MERE "SUS-
PICION" DOES NOT AND CANNOT FORM THE
BASIS OF AN INFRACTION, OFFENSE OR
CRIME.

The Trial Commissioner made a specific finding in the Memorandum of Decision, Findings of Fact and Recommendation hereinbefore set forth in the within Brief to the effect that the Petitioner was guilty of being "suspicious" in the death of Dr. Shapiro. Mere "suspicion" cannot possibly be a viola-

EXHIBIT A TO CASEY AFFIDAVIT - PETITIONER'S
BRIEF - APPELLATE DIVISION, FIRST DEPARTMENT

tion of any rule, infraction or crime. It is impossible to defend against "suspicion", and no person can be asked to defend against "suspicion". Nowhere in the Rules and Procedures of the Police Department or in the Penal Law of the State of New York does mere "suspicion" form the basis of any infraction, violation or crime.

Yet, the Trial Commissioner made a specific finding to this effect.

Nowhere in the record is there any evidence introduced that the Petitioner was guilty of the crime or even "suspicion" of the crime.

If the Trial Commissioner made a finding of this fact, as he did, then he must have tried the Petitioner Ex Parte, in an unrecorded hearing, using gossip and anonymous telephone calls as evidence and couching his final decision in some minor violations of the Rules and Proceedings of the Police Department. He did not arrive at this conclusion by virtue of the record set forth herein, since no evidence was introduced on this issue.

POINT III

THAT THE DEPARTMENTAL HEARING HEREIN,
WAS HELD IN SUCH AN ATMOSPHERE OF
CONFUSION AND SUSPICION SO THAT THE
PETITIONER WAS DENIED A FAIR TRIAL.

It is quite apparent from the Memorandum of Decision, Findings of Fact and Recommendation, set forth at length in the within Brief hercinbefore, that the Petitioner could not and did not get a fair hearing concerning the 4 minor Speci-

EXHIBIT B TO CASEY AFFIDAVIT - RESPONDENT'S
BRIEF - APPELLATE DIVISION, FIRST DEPARTMENT

POINT II

Petitioner's claim that he was found guilty of "suspicion of homicide" is without foundation.

(1)

Petitioner's brief, Points I and II, claims that petitioner was found guilty of involvement in the death of Dr. Shapiro. The argument is that the Hearing Officer made a specific finding of this. Pet. Br., p. 7.

In his memorandum to the Police Commissioner, Mr. Stutman simply reported what is clearly a fact: "There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro *but apparently there is no proof that he was responsible for his death*" (31, emphasis added).

This is not a finding of any sort any more than the fact, also stated in the Memorandum, that the petitioner had been a policeman for 7 years without any prior record. It is a piece of information which Mr. Stutman felt he should pass on the Commissioner. The latter might well want to know if suspicion still existed with respect to the petitioner's involvement in the homicide or whether the petitioner had been exculpated. It in no way affects the specific findings that the petitioner was guilty of charges 1, 2, 4, and 5, none of which relate to the homicide.

The testimony before the Hearing Officer contains practically no evidence respecting the homicide; the only time the fact the petitioner was a suspect in the homicide is mentioned is in Mr. Conover's answer to a question *by the petitioner's own attorney* (91):

"Q: Was he a target in a homicide?

A: Possibly a suspect."

EXHIBIT B TO CASEY AFFIDAVIT - RESPONDENT'S
BRIEF - APPELLATE DIVISION, FIRST DEPARTMENT

The charges being tried did not include any relating to a homicide. Some indication that the question of the petitioner's involvement in the homicide was not being tried before the Hearing Officer is the fact that the petitioner, represented by counsel, never found it necessary to invoke his privilege against self-incrimination.

(2)

Point III of Petitioner's Brief claims that the hearings were held in an atmosphere of confusion and suspicion. A reading of the minutes of the hearings gives no indication of any basis for this assertion.

It is not true, as claimed in Petitioner's Brief, p. 9, that the Hearing Officer devoted 2½ pages of a three page decision to going into the death of Dr. Shapiro. Here again, we respectfully refer the Court to that decision as it appears at pages 28-31 of the Papers on Review.

POINT III

Dismissal was appropriate in this case.

It may be that, taken singly, the findings that the petitioner was guilty of "moonlighting", of registering his car in New Jersey, and of cohabiting with Mrs. Shapiro, would call for a lesser penalty than dismissal.

This is not true, however, of the giving of evasive or untrue answers in an official proceeding. This alone justifies dismissal. *Matter of Donnelly v. Police Department*, 40 AD 2d 649 (1st Dept., 1972).

In *Matter of Dolan v. Murphy* 28 AD 2d 822 (1st Dept., 1967), the principal charge against the police officer was the giving of evasive answers in the course of an official Police Department investigation (Petitioner's Appendix in

EXHIBIT C TO CASEY AFFIDAVIT-PETITIONER'S BRIEF & AFFIDAVIT
IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO N.Y. COURT OF
APPEALS

AFFIDAVIT OF SAMUEL LORENZO IN SUPPORT OF MOTION

COURT OF APPEALS
 STATE OF NEW YORK

-----X

In the Matter of the Application of

GEORGE HANZIMANOLIS,

Petitioner,

for an order under Article 78 of
 the C.P.L.R.

-against-

PATRICK V. MURPHY, as Police Commissioner
 of the Police Department of the City of
 New York,

Respondent.

-----X

STATE OF NEW YORK)
 COUNTY OF NEW YORK) SS:

SAMUEL LORENZO, being duly sworn, deposes
 and says that he is one of the attorneys for the petitioner
 herein.

As such counsel, he has read all of the records
 and briefs herein and is fully familiar with the facts and
 the questions of law herein and on behalf of the petitioner
 herein, argued the case in the Court below.

The Appellate Division, First Department, by Order
 entered October 9, 1973, unanimously affirmed respondent's
 Order, dated November 9, 1972, dismissing the petitioner
 from his position as Patrolman from the Police Department
 of the City of New York. Said proceeding was transferred to
 the Appellate Division, First Department, from Special Term,
 Supreme Court, New York County, for review and determination

EXHIBIT C TO CASEY AFFIDAVIT-PETITIONER'S BRIEF & AFFIDAVIT
IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO N.Y. COURT OF
APPEALS

Affidavit of Samuel Lorenzo in Support of Motion

by Order dated April 23, 1973.

On November 2, 1973, your deponent, as counsel for the petitioner, served and filed a timely Notice of Appeal appealing the aforementioned Order of the Appellate Division, First Department, to the Court of Appeals, as of right, on the grounds that there was substantial constitutional questions involved.

The respondent thereafter moved to the Court of Appeals to dismiss petitioner's appeal as of right, on the grounds that the constitutional questions involved were not substantial. The Court of Appeals by Order dated January 9, 1974, dismissed petitioner's appeal on the grounds that no substantial constitutional question is directly involved.

Thereafter, your deponent timely moved before the Appellate Division, First Department, for permission to appeal to the Court of Appeals. By Order dated and entered March 14, 1974, the Appellate Division, First Department, denied petitioner's Motion for leave to appeal to the Court of Appeals.

Accordingly, this Motion is being made to the Court of Appeals for leave to appeal to the Court of Appeals.

A copy of each Order hereinbefore referred to is annexed to the Brief as Exhibits.

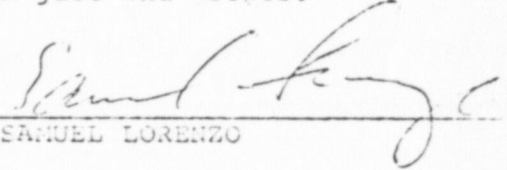
That no previous application has been made to the Court of Appeals for the relief requested herein. An application,

EXHIBIT C TO CASEY AFFIDAVIT-PETITIONER'S BRIEF & AFFIDAVIT
IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO N.Y. COURT OF
APPEALS

Affidavit of Samuel Lorenzo in Support of Motion

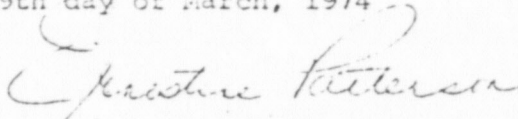
the nature of which is previously set forth, was made to the Appellate Division, First Department, and denied.

For the reasons set forth in the Brief, served and submitted herewith, your deponent respectfully prays for an Order granting relief to appeal to this Court from the Order dated October 9, 1973 of the Appellate Division, First Department, affirming respondent's Order dismissing petitioner from his position as Patrolman in the Police Department of the City of New York, and for such other, further and different relief as to this Court may seem just and proper.



 SAMUEL LORENZO

Sworn to before me this
 29th day of March, 1974



Christine Peterson
 Notary Public for the State of New York
 Term Expires March 30, 1975

EXHIBIT C TO CASEY AFFIDAVIT-PETITIONER'S BRIEF & AFFIDAVIT
IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO N.Y. COURT OF
APPEALS

from the Police Service of the City of New York.

Louis L. Stutman,
Deputy Commissioner
In Charge of Trials"

On November 9, 1972, the Police Commissioner issued a final order of dismissal permanently dismissing the petitioner from his position as Patrolman from the Police Department of the City of New York.

Petitioner thereafter brought the Article 78 Proceeding, the history of which has been previously set forth in the Affidavit of petitioner's counsel.

THE QUESTIONS OF LAW TO BE REVIEWED
BY THE COURT OF APPEALS ARE AS FOLLOWS:

1. Was the dismissal of the Petitioner from the Police Department excessive, cruel and inhuman punishment, assuming that the Petitioner was guilty of Specifications Nos. 1, 2, 4 and 5 as alleged by the Police Commissioner since the infractions complained of are of such a minor nature?
2. Was there substantial competent evidence in the record to justify the findings that the Petitioner was guilty of Specifications Nos. 1, 2, 4 and 5?
3. Was Petitioner's rights of due process of law under the New York State and United States Constitutions denied him by the Department, by finding the Petitioner guilty of "suspicion", that the Petitioner was involved in the homicide of Dr. Shapiro, in view of the fact that the Petitioner was not charged in being involved in the homicide?

EXHIBIT C TO CASEY AFFIDAVIT-PETITIONER'S BRIEF & AFFIDAVIT
IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO N.Y. COURT OF
APPEALS

4. Was Petitioner's rights of due process of law under the New York State and the United States Constitutions denied him by the Department in finding him guilty of "suspicion that the Respondent was involved in the homicide of Dr. Shapiro" since mere "suspicion" does not and cannot form the basis of an infraction, offense or crime?

5. Was the Departmental Hearing herein held in such an atmosphere of confusion and suspicion so that the Petitioner was denied a fair trial?

POINT I

That the punishment of dismissal was excessive, cruel and inhuman punishment since the infractions complained of are of such a minor nature.

The Respondent's attorney in his brief before the Appellate Division makes the following concession:

"It may be that, taken singly, the findings that the petitioner was guilty of "moonlighting", of registering his car in New Jersey, and of co-habiting with Mrs. Shapiro, would call for a lesser penalty than dismissal.

This is not true, however, of the giving of evasive or untrue answers in an official proceeding. This alone justifies dismissal. Matter of DONNELLY v. POLICE DEPARTMENT, 40 AD 2d 649 (1st Dept., 1972)."

Apparently, the Respondent concedes that the one Specification of giving evasive answers in an official proceeding was sufficient to support Petitioner's dismissal. The question and answers complained of according to the charges, are as follows:

EXHIBIT C TO CASEY AFFIDAVIT PETITIONER'S BRIEF & AFFIDAVIT
IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO N.Y. COURT OF
APPEALS

The record is a mass of confusion almost unrelated to the charges and specifications herein.

In order to justify the dismissal of the Petitioner from his Civil Service position, substantial, competent evidence should be the basis for such dismissal.

The record is too lengthy to be quoted herein. The entire record is on file with the Court as part of this proceeding.

I respectfully suggest that due to the extreme nature of the punishment, namely, dismissal from his job, the Petitioner should have that record reviewed by the Court of Appeals.

POINT III

That the Petitioner was deprived of due process of law under the New York State and the United States Constitutions when he was found by the Department to be guilty of "suspicion". That the Petitioner was involved in the homicide of Dr. Shapiro in view of the fact that he was not charged with being involved in the homicide.

Your affirmant quotes from the findings of the Police Commissioner: (All of the findings are previously set forth herein)

"There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro, but apparently there is no proof that he was responsible for his death."

This is a direct quote from the findings of the Trial Commissioner. This is listed under his findings and set forth

EXHIBIT C TO CASEY AFFIDAVIT-PETITIONER'S BRIEF & AFFIDAVIT
IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO N.Y. COURT OF
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as part of those findings. No where in the Specifications and charges was there any mention of the homicide of Dr. Shapiro. No where in the Specifications and charges was the Petitioner apprised of the fact that he should defend himself of the "suspicion" of being involved in the homicide of Dr. Shapiro.

This is a basic violation of due process. The charges are completely unrelated to the death of Dr. Shapiro. Never have charges been brought against the petitioner with reference to Dr. Shapiro's death. The petitioner had steadfastly denied any involvement and swore that he was not involved. Yet, the Trial Commissioner chose to include it in his findings.

POINT IV

That the Petitioner's due process rights were further violated in finding him guilty of "suspicion". That the Petitioner was involved in the homicide of Dr. Shapiro since mere "suspicion" does not and cannot form the basis of an infraction, offense or crime.

Your affirmant has previously set forth the exact quote from the findings of the Trial Commissioner.

I respectfully suggest that mere "suspicion" cannot possibly be a violation of any rule, infraction or crime. It is impossible to defend against "suspicion" and no person can be asked to defend against "suspicion".

Since the Trial Commissioner did make such a finding of fact, your affirmant respectfully suggests that it was a clear

EXHIBIT C TO CASEY AFFIDAVIT-PETITIONER'S BRIEF & AFFIDAVIT
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APPEALS

violation of the due process rights of the Petitioner herein.

POINT V

That the Departmental Hearing was held in such an atmosphere of confusion and suspicion so that the Petitioner was denied a fair hearing.

It is quite apparent from the Memorandum of Decision, Findings of Fact and Recommendation, set forth previously herein at length, that the Trial Commissioner was confusing his own suspicion uncorroborated with the four Specifications which the Petitioner was found guilty of.

The Commissioner of Trials spends 2 1/2 pages of his 3 page decision going into the question of Dr. Sidney Shapiro's death and not into the alleged violations of the charges and Specifications which the Petitioner was charged with. I respectfully suggest that the Trial Commissioner completely confused the two issues and it is apparent from his own findings.

I respectfully suggest that from the Trial Commissioner's findings, it is apparent that the Petitioner was not dismissed from his job because of the 4 Specifications, but rather because of the Trial Commissioner's "suspicion".

WHEREFORE, your affirmant respectfully suggests to the Court that especially in view of the extreme punishment of dismissal, the issues raised by the Petitioner herein are

EXHIBIT D TO CASEY AFFIDAVIT-RESPONDENT'S BRIEF IN OPPOSITION
TO MOTION FOR LEAVE TO APPEAL TO NY COURT OF APPEALS

biguous". Pet. App. Div. Br., p. 12. Petitioner's present posture is that his answers to these 3 questions were not "evasive", since he could not recall these events (Petr. Br., p. 7). The testimony belies the claim; there are at least 32 answers of "I don't recall" at pp. 196 to 203 of the Papers on Review and several "It's quite possible" answers (203, 206).

POINT II

Petitioner's claim that he was found guilty of "suspicion of homicide" is without foundation.

(I)

Petitioner's brief, Points III and IV, claims that petitioner was found guilty of involvement in the death of Dr. Shapiro. The argument is that the Hearing Officer made a specific finding of this. Pet. Br., p. 8.

In his memorandum to the Police Commissioner, Mr. Stutman simply reported what is clearly a fact: "There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro *but apparently there is no proof that he was responsible for his death*" (31, emphasis added).

This is not a finding of any sort any more than the fact, also stated in the Memorandum, that the petitioner had been a policeman for 7 years without any prior record. It is a piece of information which Mr. Stutman felt he should pass on the Commissioner. The latter might well want to know if suspicion still existed with respect to the petitioner's involvement in the homicide or whether the petitioner had been exculpated. It in no way affects the specific findings that the petitioner was guilty of charges 1, 2, 4, and 5, none of which relate to the homicide.

EXHIBIT D TO CASEY AFFIDAVIT-RESPONDENT'S BRIEF IN OPPOSITION
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The testimony before the Hearing Officer contains practically no evidence respecting the homicide; the only time the fact the petitioner was a suspect in the homicide is mentioned is in Mr. Conover's answer to a question *by the petitioner's own attorney* (91):

"Q: Was he a target in a homicide?

A: Possibly a suspect."

The charges being tried did not include any relating to a homicide. Some indication that the question of the petitioner's involvement in the homicide was not being tried before the Hearing Officer is the fact that the petitioner, represented by counsel, never found it necessary to invoke his privilege against self-incrimination.

(2)

Point V of Petitioner's Brief claims that the hearings were held in an atmosphere of confusion and suspicion. A reading of the minutes of the hearings gives no indication of any basis for this assertion.

It is not true, as claimed in Petitioner's Brief, p. 10, that the Hearing Officer devoted 2½ pages of a three page decision to going into the death of Dr. Shapiro. Here again, we respectfully refer the Court to that decision as it appears at pages 28-31 of the Papers on Review.

POINT III

Dismissal was appropriate in this case.

It is true that in the court below the respondent conceded that, taken singly, the findings that the petitioner was guilty of "moonlighting", of registering his car in New Jersey, and of cohabiting with Mrs. Shapiro, might call for a lesser penalty than dismissal. See Petr. Br., p. 6.

EXHIBIT D TO CASEY AFFIDAVIT-RESPONDENT'S BRIEF IN OPPOSITION
TO MOTION FOR LEAVE TO APPEAL TO NY COURT OF APPEALS

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EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

In The

Supreme Court of the United States

October Term, 1974

No.

GEORGE HANZIMANOLIS,

Petitioner,

vs.

PATRICK V. MURPHY, as POLICE COMMISSIONER OF
THE POLICE DEPARTMENT OF THE CITY OF NEW
YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION JUDICIAL DEPARTMENT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED
STATES:

The petitioner prays that a writ of certiorari issue to review
the judgment of the Supreme Court of the State of New York,
Appellate Division, First Judicial Department, entered on
October 9, 1973, which unanimously affirmed the final order of
dismissal of the Police Commissioner of the Police Department

Defendant's Exhibit E

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

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of the City of New York, made November 9, 1972. Timely appeal was taken, as of right, on the grounds that substantial federal and state constitutional questions were involved, to the Court of Appeals of the State of New York, on November 1, 1973, said appeal having been dismissed by the Court of Appeals by order entered January 9, 1974 upon the ground that no substantial constitutional question was directly involved. Thereafter, a motion for leave to appeal to the Court of Appeals of the State of New York was timely made to the Supreme Court, Appellate Division, First Department, on February 5, 1974, which was denied by order entered March 14, 1974. Thereafter, a motion for leave to appeal to the Court of Appeals of the State of New York was timely made to the Court of Appeals on approximately April 4, 1974, which was denied by order entered June 5, 1974.

OPINION BELOW

There are no opinions in the within case.

Each of the Courts hereinbefore mentioned rendered judgment and decision without opinion and the orders of said Court are reproduced in the Appendix.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to the authority of 28 U.S.C. §1257(3).

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

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QUESTIONS PRESENTED

1. Have petitioner's rights of due process of law and equal protection of laws under the United States Constitution been violated by the Police Department of the City of New York, at the departmental hearing, herein, by finding the petitioner guilty of "suspicion," that the petitioner was involved in the homicide of one Dr. Shapiro in view of the fact that the petitioner was not charged by the respondent as being involved in the homicide prior to the hearing?
2. Was petitioner's rights of the equal protection of laws and due process of law under the United States Constitution denied him by the respondent in finding him guilty of "suspicion" that the respondent was involved in a homicide since mere "suspicion" does not and cannot form the basis of an infraction, offense or crime?
3. Was the departmental hearing held by the respondent in such an atmosphere of confusion and suspicion so that the petitioner was denied a fair trial and therefore deprived of the equal protection of the laws and due process of law under the United States Constitution?
4. Was the punishment of dismissal from his employment rendered by the respondent against the petitioner, excessive, cruel and inhuman punishment since the infractions of the rules and procedures of the Police Department of the City of New York which the petitioner is alleged to have violated are of such a minor nature?

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
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CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are:

Amendment XIV, Section 1;
Amendment VIII;
Amendment V.

STATEMENT OF THE CASE

The petitioner was employed as a patrolman by the Police Department of the City of New York for approximately 7 years, when on August 9, 1971, the petitioner was charged by the New York City Police Department with 5 alleged violations of the Rules and Procedures of the Police Department of the City of New York which was alleged to constitute conduct unbecoming a police officer.

On May 12, 1972, 9 months after the charges were made, the petitioner was suspended from all duties as police officer pending a departmental hearing.

The 5 alleged violations are exactly set forth in Appendix I.

A characterization of the charges, for the sake of brevity are as follows:

1. Working at another job on off-duty hours without permission of the Commissioner; 2. Registering his motor vehicle in New Jersey, although not a resident; 3. Knowingly

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

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and wrongfully making false statements in a homicide investigation; 4. Cohabiting with a married female, not his wife; 5. Giving evasive answers during departmental interview.

A departmental hearing was held on June 21, 1972 and July 11, 1972 before the Deputy Commissioner of Trials for the Police Department of the City of New York.

On November 8, 1972, the Deputy Commissioner in charge of the hearing issued his findings, rationale and recommendation in the form of memorandum to the Police Commissioner, which is set forth in Appendix II.

Among other things, the petitioner was found guilty of Specifications 1, 2, 4 and 5, and not guilty of Specification 3 (knowingly and wrongfully making false statement during a homicide investigation).

On November 9, 1972, the Police Commissioner ordered the petitioner to be dismissed from his employment as police officer with the Police Department of the City of New York, following the recommendation of the hearing officer. The order of dismissal is set forth in Appendix III.

The petitioner, thereafter, timely commenced an Article 78 Proceeding in New York State Supreme Court, Special Term, New York County, to review the determination of the Police Commissioner, which was referred to New York State Supreme Court, Appellate Division, First Department, by order entered April 23, 1973. All of the federal Constitutional questions raised in the within petition for writ of certiorari were raised in that

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

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proceeding in the petition, thereof (16a-17a, 24a-25a). The New York State Supreme Court, Appellate Division, First Department unanimously affirmed the Police Commissioner's order, without opinion (30a-31a), by order entered October 9, 1973.

Thereafter, timely appeal was taken as of right, to the New York State Court of Appeals, on the grounds that there were "questions directly involving the construction of the provisions of the Constitutions of the State of New York and of the United States" (32a-33a), which appeal was dismissed by the New York State Court of Appeals on the ground "that no substantial constitutional question is directly involved" (35a), by order entered on January 9, 1974. Thereafter, a motion for leave to appeal to the New York State Court of Appeals was timely made to the Supreme Court, Appellate Division, First Department on February 5, 1974, which was denied by order entered March 14, 1974 (36a-37a). Thereafter, a motion for leave to appeal to the Court of Appeals of the State of New York on approximately April 4, 1974, which was denied by order entered on June 5, 1974 (37a-38a), and thus petitioner's state remedies were exhausted.

REASONS FOR GRANTING WRIT

The within Court is respectfully requested to compare the charges (Appendix I) with the findings, rationale and recommendation of the Trial Commissioner (Appendix II).

It does not appear that the findings of the Commissioner belong as part of the same case with the charges. The following is a direct quote from the findings of the Trial Commissioner:

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

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"There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro, but apparently there is no proof that he was responsible for his death."

Where, in the charges against the petitioner, was he notified that he would be tried for being "suspicious" with respect to the homicide of Dr. Shapiro? He was not charged or notified that he should defend himself with respect to Dr. Shapiro's death. Yet, the Trial Commissioner made a specific finding, which is quoted hereinbefore.

Because he was not notified and afforded the opportunity to defend against any involvement in the homicide, he was not afforded due process of law and the equal protection of the laws. It should be noted that no formal charges have ever been made against petitioner, with respect to Dr. Shapiro's death.

Further, by the Trial Commissioner's finding that the petitioner was "suspicious" of being involved in the homicide, the petitioner was again not afforded due process and equal protection of the laws.

Mere suspicion cannot form the basis of any infraction or violation. To be found guilty of mere "suspicion" and to be stripped of one's Civil Service employment as a result, as the petitioner was, is a desecration of due process of law, which cannot go unheeded.

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

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In addition, by a comparison of the charges with the Trial Commissioner's findings, it is clear that the Trial Commissioner confused the death of Dr. Shapiro with the charges which were made against the petitioner. From his findings, it is apparent that the Trial Commissioner was far more concerned with the death of Dr. Shapiro than with the charges before him.

By confusing the suspicions concerning the petitioner, with the actual charges which were made, it is suggested that the departmental hearing was held in such an atmosphere of confusion and suspicion so that the petitioner was denied a fair hearing and thereby denied his constitutional rights of due process of equal protection of the laws.

It is further pointed out to the Court that the petitioner was found guilty of charges 1, 2, 4 and 5 which were relatively minor in nature. Although they were minor, the punishment was drastic. The petitioner was dismissed from his Civil Service position as Patrolman of the Police Department of the City of New York.

Such a drastic punishment for the relatively minor offenses, is a violation of the 8th Amendment of the United States Constitution in that the punishment was "cruel and unusual punishment."

The case at bar would have nationwide application in that this case is a prime example of how far the administrative agencies have eroded the due process rights of persons appearing

EXHIBIT E TO CASEY AFFIDAVIT-PLAINTIFF'S PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK,
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before them. The case at bar could serve as a precedent to all administrative agencies that their special status does not mean that they can eliminate due process requirements altogether.

It would also serve as a guide to administrative agencies that the punishment meted out by them must have some relation to the seriousness or the lack of seriousness to the charges before them.

CONCLUSION

The petitioner, having exhausted his state remedies, has been denied equal protection of the law and due process of law and has been inflicted with cruel and inhuman punishment; the circumstances thereof are of national significance and the requested writ of certiorari should be granted.

Respectfully submitted

s/ Samuel Lorenzo
Attorney for Petitioner

EXHIBIT F TO CASEY AFFIDAVIT-RESPONDENT'S BRIEF IN OPPOSITION
TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI

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The respondent has 7 years of service in the department without any prior record.

Recommendation

I recommend that the respondent be DISMISSED from the Police Service of the City of New York."

ARGUMENT

Petitioner's claim that he was found guilty of "suspicion of homicide" is without foundation.

There is nothing in the evidence to indicate that the hearing accorded petitioner violated petitioner's constitutional rights under due process and equal protection of the laws.

(1)

In the petition, petitioner claims that he was found guilty of involvement in the death of Dr. Shapiro. The argument is that the Hearing Officer made a specific finding of this (Pet., p. 7). This argument lacks merit.

In his memorandum to the Police Commissioner, the Hearing Officer simply reported what is a fact: "There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro *but apparently there is no proof that he was responsible for the death*". (A10a, emphasis added).

This is not a "finding" of any sort. It is merely an item of information which the Hearing Officer felt he should pass on to the Police Commissioner. The latter might well want to know if suspicion still existed with respect to petitioner's involvement in the homicide or whether the petitioner had been exculpated. It in no way affects the specific findings that the petitioner was guilty of charges 1, 2, 4 and 5, none of which relate to the homicide.

Respondent's Brief in Opposition to Petitioner's Petition for
Certiorari
Dependent's Exhibit "F"

EXHIBIT F TO CASEY AFFIDAVIT-RESPONDENT'S BRIEF IN OPPOSITION
TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI

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The testimony before the Hearing Officer contains practically no evidence respecting the homicide. The only time the fact the petitioner was a suspect in the homicide is mentioned is in Mr. Conover's answer to a question by petitioner's own attorney (91):

"Q. Was he a target in a homicide. A. Possibly a suspect."

The charges being tried did not include any relating to a homicide. Some indication that the question of the petitioner's involvement in the homicide was not being tried before the Hearing Officer is the fact that petitioner, represented by counsel, never found it necessary to invoke his privilege against self-incrimination.

It is noteworthy that the New York Appellate Division and the New York Court of Appeals unanimously rejected petitioner's argument that he was found guilty of "suspicion". The allegation that petitioner was found guilty of suspicion does not involve a question of due process. The State Courts gave an interpretation of the evidence and an interpretation of the Hearing Officer's memorandum, which was reasonable and should not be disturbed.

(2)

Petitioner also claims that the hearing was held in an "atmosphere of confusion and suspicion" resulting in petitioner being denied a hearing as required by the Due Process and Equal Protection Clauses (Petition, p. 8). The petitioner does not call to the Court's attention any specific instances in the proceedings to support his contention. A reading of the minutes gives no indication of any basis for this assertion.

EXHIBIT F TO CASEY AFFIDAVIT-RESPONDENT'S BRIEF IN OPPOSITION
TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI

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(3)

Petitioners also argues that the punishment of dismissal constituted cruel and inhuman treatment (Pet., p. 8). The cruel and inhuman punishment clause appears to apply only to punishment in criminal cases after conviction and sentence. See *Trope v. Dulles*, 356 U.S. 86, 99-102 (1958); *Weems v. United States*, 217 U.S. 349, 368 (1910); *Johnson v. Glick*, 481 F. 2d 1028, 1031 (2d Cir., 1973), cert. den. sub nom. *Employee-Officer John v. Johnson*, 414 U.S. 1033 (1973).

The charges against petitioner included "moonlighting", registering a car in New Jersey, co-habiting with Mrs. Shapiro and giving evasive and untrue answers in an official proceeding. Under New York law, the charge of giving evasive and untrue answers, by itself, justified the dismissal. See *Matter of Donnelly v. Police Department*, 40 AD 2d 649, 336 N.Y.S. 2d 508 (1st Dept., 1972).

CONCLUSION

The petition for writ of certiorari should be denied.
September 27, 1974.

Respectfully submitted,

ADRIAN P. BURKE,
*Corporation Counsel of the
City of New York,
Attorney for Respondent.*

L. KEVIN SHERIDAN,
LEONARD KOERNER,
of Counsel.

AFFIDAVIT OF SAMUEL LORENZO, FOR PLAINTIFF, IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE HANZIMANOLIS,

Plaintiff,

- against -

AFFIDAVIT IN OPPOSITION
TO MOTION TO DISMISS

MICHAEL J. CODD, as Police
Commissioner of the City
of New York,

Defendant.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

SAMUEL LORENZO, being duly sworn, deposes and says:

That I am the attorney for the plaintiff herein, and make this affidavit in opposition to the instant motion to dismiss the plaintiff's complaint on the grounds that it is barred by the doctrine of res judicata and/or collateral estoppel.

Counsel for the defendant has set forth the history of this action in her affidavit in support of the motion and I will not repeat the history except as I believe it bears on the issues involved herein.

I have set forth the following exhibits:

- (a) Plaintiff's Exhibit 1 - Charges brought against the plaintiff by the Police Department which allegedly served as a basis for the disciplinary hearing of the Police Department.
- (b) Plaintiff's Exhibit 2 - The Memorandum of Decision and Findings of Fact and Recommendation of Deputy Commissioner STUTMAN, following the disciplinary hearing.
- (c) Plaintiff's Exhibit 3 - Final Order of Dismissal.

AFFIDAVIT OF SAMUEL LORENZO, FOR PLAINTIFF, IN OPPOSITION

(d) Plaintiff's Exhibit 4 - Plaintiff's Amended Complaint in the within action.

The exhibits are set forth in their printed form rather than their original form for purposes of legibility since the originals do not photostat well. In all cases they are exact duplications.

1. On August 9, 1971, the plaintiff was charged by the Police Department with five violations of the Rules and Procedures of the Police Department of the City of New York (Plaintiff's Exhibit 1).

2. On May 12, 1971, the plaintiff was suspended from all duties as a patrolman, without pay, pending a departmental hearing of the charges.

3. On June 21, 1972, and July 11, 1972, the Departmental Disciplinary Hearing was held before Deputy Commissioner LOUIS L. STUTMAN, the trial officer.

4. That during the disciplinary hearing and apart from the record of the hearing, HAROLD B. FOMER, Esq., the attorney who represented plaintiff at that hearing, had entered into an agreement with the Hearing Officer, Deputy Commissioner STUTMAN, in which the plaintiff actually pleaded guilty to said charges and it was agreed that the only punishment for the plaintiff would be a thirty-day suspension from the job without pay.

5. Sometime thereafter, and before November 8, 1972, Deputy Commissioner STUTMAN refused to consummate the agreement and permitted the plaintiff to withdraw his plea of guilty and proceeded on with the hearing.

6. On November 8, 1972, Deputy Commissioner STUTMAN issued his Findings, Rationale, and Recommendation in the form of a Memorandum (Plaintiff's Exhibit 2).

AFFIDAVIT OF SAMUEL LORENZO, FOR PLAINTIFF, IN OPPOSITION

7. The following day, on November 9, 1972, Hon. PATRICK V. MURPHY, then Police Commissioner, issued a Final Order of Dismissal (Plaintiff's Exhibit 3).

8. Thereafter an Article 78 Proceeding was commenced in the Supreme Court, New York County, which was referred to the Appellate Division, First Department. The Appellate Division, First Department unanimously affirmed the decision of the Police Commissioner, without opinion.

Plaintiff then appealed as of right to the New York State Court of Appeals on the grounds that plaintiff's Federal and State constitutional rights were violated. Plaintiff's appeal was dismissed, after motion by the defendant, on the grounds that no substantial constitutional questions were raised and without further opinion.

Thereafter, plaintiff sought leave to appeal to the Court of Appeals and said leave was denied by both the Appellate Division, First Department, and the New York State Court of Appeals, all without opinion.

Thereafter, plaintiff petitioned the Supreme Court of the United States for a Writ of Certiorari. The Supreme Court denied the Writ of Certiorari, without opinion.

Thereafter, plaintiff commenced the within proceeding.

9. Your deponent respectfully refers the Court to the Amended Complaint filed herein for the exact allegations herein (Plaintiff's Exhibit 4).

The basis for plaintiff's action herein is that the Police Department and Deputy Commissioner STUTMAN used the five minor violations (Plaintiff's Exhibit 1) as a subterfuge, a deception, and an artificial justification for the discharge of the plaintiff from his civil service position as patrolman with the Police Department of the City of New York; that the five minor

AFFIDAVIT OF SAMUEL LORENZO, FOR PLAINTIFF, IN OPPOSITION

violations were merely used as a vehicle to remove plaintiff from his position because in fact the Police Department was "suspicious" that the plaintiff might possibly be involved in the homicide of one Dr. Shapiro, the husband of plaintiff's girl friend; that by using this "vehicle" to get rid of the plaintiff, plaintiff was being denied his constitutional privileges of Due Process and Equal Protection under "color of law."

10. I quote from Deputy Commissioner STUTMAN's Findings (Plaintiff's Exhibit 2), which followed the evidentiary departmental hearing:

" There is an obvious suspicion that the respondent herein was involved in the homicide of Dr. Shapiro, but apparently there is no proof that he was responsible for his death."

So involved with the death of Dr. Shapiro was Deputy Commissioner STUTMAN, that he issued a Finding concerning the homicide even though there was not a hint of charging plaintiff with any involvement in the death of Dr. Shapiro. He was simply charged with the five minor violations set forth in plaintiff's Exhibit 1. From the moment that Deputy Commissioner STUTMAN made this Finding, plaintiff's cause of action in the within action began and by that time the evidentiary hearing was over.

The Article 78 Proceeding and everything that followed that was merely a review of the evidence presented at the departmental hearing which was closed by the time plaintiff's cause of action arose. The record had already been made and only that record which was made prior to the origins of plaintiff's cause of action was subject to that review.

Nowhere in the course of any of the proceedings following Deputy Commissioner STUTMAN's Finding could the plaintiff have introduced evidence that the Deputy Commissioner was biased; nowhere in any of the proceedings following that Finding did plaintiff have the right to examine and cross-examine Deputy Commissioner

AFFIDAVIT OF SAMUEL LORENZO, FOR PLAINTIFF, IN OPPOSITION STUTMAN; nowhere in the proceedings that followed the Finding was plaintiff able to obtain Discovery of the facts which would prove that the trial was a subterfuge. The Article 78 Proceeding was merely a review of what had taken place prior to and up to the Finding, where not a word of Dr. Shapiro's death had been mentioned.

In the case of LOMBARD v. BOARD OF EDUCATION OF CITY OF NEW YORK 502P.2d 631 (1974), the Court said as follows:

"There may have been a number of reasons why Lombard was dismissed without determination on the merits of the issue whether Murphy's charges were based upon bias or even reprisal. The failure to put Murphy on his oath and to permit Lombard to cross-examine him tends to support the conclusion that a finding on Murphy's bias was not necessary to the decision that Lombard was mentally unfit."

If you simply substitute the name "STUTMAN" in place of the name "Murphy," that very same quote applies in the within case. Plaintiff herein contends that the Police Department acting through STUTMAN took advantage of the disciplinary hearing to dismiss him from the force because of their suspicions about Dr. Shapiro.

No hearing was or could have been held on the Article 78 Proceeding where evidence to support this contention could have been introduced. Nor was any hearing held at any time thereafter where any evidence to support that allegation could be introduced. For example, plaintiff, beside examining and cross-examining Deputy Commissioner STUTMAN and moving for Discovery of the Police Department files could adduce evidence from his attorney, HAROLD B. FONER, Esq., who represented him at the departmental hearing, as to the agreement between himself and Deputy Commissioner STUTMAN to show that STUTMAN believed the infractions were so minor that a thirty day suspension was sufficient. Deputy Commissioner STUTMAN could then be examined and cross-examined as to what actually caused him to change his mind when he issued a drastic recommendation of dismissal instead

AFFIDAVIT OF SAMUEL LORENZO, FOR PLAINTIFF, IN OPPOSITION

of a minor thirty day suspension.

If in fact the Deputy Commissioner was motivated by anything other than the charges and evidence on those charges then plaintiff has proved his cause of action herein.

In brief, plaintiff has never had his day in Court in which he could introduce evidence to support the charges he now makes. Only this action will give him that day in Court, to introduce that evidence.

The questions involved in the within action are questions of fact, not of law. Those facts can only be introduced at a trial, which has not yet been held.

11. I respectfully request this Court to deny the defendant's motion so that an actual trial in the District Court can determine whether defendant has violated plaintiff's constitutional rights, under what appears to be color of law.

Because plaintiff has never had a trial where he can introduce evidence to support his allegation the doctrine of res judicata or collateral estoppel cannot apply.

WHEREFORE, your deponent respectfully requests that the within motion be denied.

Sworn to before me this 26th
day of September, 1975

SAMUEL LORENZO

TO: CLERK OF THE COURT

W. BERNARD RICHLAND, Esq.
Attorney for Defendant
Municipal Building
New York, New York 10007

EXHIBIT 1 TO LORENZO AFFIDAVIT-CHARGES BROUGHT AGAINST
THE PLAINTIFF

1a

APPENDIX I

CHARGES AGAINST PETITIONER

The City of New York
POLICE DEPARTMENT

CHARGES AND
SPECIFICATIONS

DATE
August 9, 1971

Command
1 D.C.O.

Serial No.
84

Diciplinary Records
Unit Serial Number
45339

TO THE POLICE COMMISSIONER:

I hereby charge Ptl. Hanzimanolis, George — 12732 — 26th
Precinct with Violation of the Rules and Procedures

SPECIFICATIONS

in that:

1. Said Patrolman Hanzimanolis, did knowingly and wrongfully engage actively in an occupation, other than his employment in the Police Department, in February of 1970, without written authorization from the Police Commissioner, in that he did own and operate a newspaper delivery service.

(R. & P. 2/47.0)

2. Said Patrolman Hanzimanolis, did knowingly and wrongfully register a motor vehicle with the state of New Jersey, on August 21st, 1970, using the address of 19 Harbor Way, East

EXHIBIT 1 TO LORENZO AFFIDAVIT-CHARGES BROUGHT AGAINST
THE PLAINTIFF

2a

Charges Against Petitioner

Kearnesburg, New Jersey, when at the time of this registration he was not a resident of said address.

(R. & P. 2/37.1; 27/3.1)

3. Said Patrolman Hanzimanolis, did knowingly and wrongfully, and without just cause, make false statements, on September 24, 1970, during an official homicide investigation being conducted by the New York State Police.

(R. & P. 2/37.1; 27/3.1)

4. Said Patrolman Hanzimanolis, being lawfully married to Noreen Hanzimanolis, did on September 21st, 1970, at the Parkway Motel, Elmsford, New York, knowingly and wrongfully cohabit with one, Nina Shapiro, a married female, not his wife.

(R. & P. 2/37.1; 27/3.1)

5. Said Patrolman Hanzimanolis, did knowingly and wrongfully give evasive answers during an official department interview held on June 17th, 1971, in that he was asked the following questions: If he had registered at the Parkway Motel, Elmsford, New York, on September 21st, 1970 under the name of Mr. and Mrs. L. Lewis, using license plate #SRX 741; if he had never registered at said motel or any motel in the vicinity of said motel, using the name L. Lewis; if between the period of January 19th and September 21st 1970, if he had registered at

EXHIBIT 1 TO LORENZO AFFIDAVIT-CHARGES BROUGHT AGAINST
THE PLAINTIFF

3a

Charges Against Petitioner

said motel using the name L. Lewis; his answers to these questions, in the order they were asked were, "I don't recall"; "It's quite possible"; and "I don't recall".

(R. & P. 2/37.1; 27/3.1)

COMPLAINANT:

s/ Lt. Casper Bonello
Lieutenant Casper Bonello
Internal Affairs Division,
First Deputy Commissioner's
Office.

s/ George Morse
Captain George Morse
Internal Affairs Division,
First Deputy Commissioner's
Office.

WITNESSES:

Sgt. Charles Palmer, Sh#981, I.A.D., 1 D.C.O. (Day duty)
Sgt. Raymond Manners, Sh#2145, 26th Sqd.
Lt. Robert Flynn, New York State Police.
Inv. Frank Conover, New York State Police.
Assunata Guazzo, 19 Harbor Way, East Keanesburg, N.J.

EXHIBIT 1 TO LORENZO AFFIDAVIT-CHARGES BROUGHT AGAINST
THE PLAINTIFF

4a

Charges Against Petitioner

VACATIONS:

Lt. Casper Bonello — 11/22 to 12/3/71.
Sgt. Charles Palmer — 8/6 to 9/7/71.
Sgt. Raymond Manners — 8/9 to 8/20/71.
Ptl. George Hanzimanolis — Completed.

CHARGES AND SPECIFICATIONS

with

NOTICE OF TRIAL

In Re Complaint vs. Ptl. Hanzimanolis, George — 12732 —
26th Precinct

1st ENDORSEMENT

C.O., I.A.D., 1 D.C.O. to the Police Commissioner, August 9,
1971, I have investigated the within charges and recommend:
Trial

s/ Joseph J. Collins
Joseph J. Collins
Deputy Chief Inspector

3rd ENDORSEMENT

NOTICE OF TRIAL

New York, Sept. 10, 1971

EXHIBIT 1 TO LORENZO AFFIDAVIT-CHARGES BROUGHT AGAINST
THE PLAINTIFF

5a

Charges Against Petitioner

TAKE NOTICE that charges have been preferred against you by the Police Department of the City of New York, and that these charges with specifications thereof are as herein set forth.

A public trial will be held and charges examined into by and before the Police Commissioner or a Deputy Commissioner of Manhattan, City of New York, 400 Broom St. Rm. 812, at 1,000 hrs. am/pm, on Sept. 27, 1971, and will be continued as ordered until concluded.

You are directed to answer these charges in accordance with the Rules and Procedures, at the time, date and place designated above.

BY DIRECTION OF THE POLICE COMMISSIONER

LOUIS L. STUTMAN
Chief Clerk

EXHIBIT 2 TO LORENZO AFFIDAVIT-MEMORANDUM OF DECISION, FINDINGS
OF FACT AND RECOMMENDATION OF DEPUTY COMMISSIONER STUTMAN

6a

APPENDIX II
MEMORANDUM

THE CITY OF NEW YORK
POLICE DEPARTMENT
NEW YORK, N.Y. 10013

MEMORANDUM TO: POLICE COMMISSIONER

Re:

Patrolman George Hanzimanolis,
Shield No. 12732, 26th Precinct
Disciplinary Records Case No. 45339

The respondent is charged with the following Specifications:

1. Said Patrolman Hanzimanolis, did knowingly and wrongfully engage actively in an occupation, other than his employment in the Police Department, in February of 1970, without written authorization from the Police Commissioner, in that he did own and operate a newspaper delivery service.

(R & P 2/47.0)

2. Said Patrolman Hanzimanolis, did knowingly and wrongfully register a motor vehicle with the state of New Jersey, on August 21st, 1970, using the address of 19 Harbor Way, East Keanesburg, New Jersey when at the time of this registration he was not a resident of said address.

(R & P 2/37.1; 27/3.1)

EXHIBIT 2 TO LORENZO AFFIDAVIT-MEMORANDUM OF DECISION, FINDINGS
OF FACT AND RECOMMENDATION OF DEPUTY COMMISSIONER STUTMAN

7a

Memorandum

3. Said Patrolman Hanzimanolis, did knowingly and wrongfully, and without just cause, make false statements on September 24, 1970, during an official homicide investigation being conducted by the New York State Police.

(R & P 2/37.1; 27/3.1)

4. Said Patrolman Hanzimanolis, being lawfully married to Noreen Hanzimanolis, did on September 21st, 1970 at the Parkway Motel, Elmsford, New York, knowingly and wrongfully cohabit with one, Nina Shapiro, a married female, not his wife.

(R & P 2/37.1; 27/3.1)

5. Said Patrolman Hanzimanolis, did knowingly and wrongfully give evasive answers during an official department interview held on June 17th, 1971, in that he was asked the following questions: If he had registered at the Parkway Motel, Elmsford, New York, on September 21st, 1970 under the name of Mr. & Mrs. L. Lewis, using license plate No. SRX 741; if he had ever registered at said motel or any motel in the vicinity of said motel, using the name of L. Lewis; if between the period of January 19th and September 21st, 1970, if he had registered at said motel using the name L. Lewis; his answers to these questions, in the order they were asked were, "I don't recall"; "It's quite possible"; and "I don't recall".

(R & P 2/37.1; 27/3.1)

EXHIBIT 2 TO LORENZO AFFIDAVIT-MEMORANDUM OF DECISION, FINDINGS
OF FACT AND RECOMMENDATION OF DEPUTY COMMISSIONER STUTMAN

8a

Memorandum

A trial was completed before me on July 11, 1972.

On September 21, 1970, Dr. Sidney Shapiro was found dead in his automobile in Westchester County apparently the victim of a homicide by gunshot. Anonymous telephone calls to law enforcement agencies alleged that a new York City patrolman was friendly with a doctor's wife and that the patrolman had hired someone to kill Dr. Shapiro. The respondent was identified as the above patrolman. He is legally separated from his wife.

On September 24, 1970 the respondent in the presence of investigators of this department told representatives of the New York State Police that he had been having an affair with Mrs. Nina Shapiro at the time of the death of her husband. He further stated that on the date of the homicide he had gone to a motel with Mrs. Shapiro and registered under the name of Mr. and Mrs. L. Lewis at Parkway Motel. They had gone to motels on other occasions.

On June 8th and June 17th, 1971 the respondent was questioned by representatives of the Internal Affairs Division of this department. He then said that the statement he made to the New York State police was false. He was specifically asked if he had registered at a motel on September 21, 1970 under the name of Mr. and Mrs. L. Lewis and he denied it. The respondent was asked whether he had registered on 27 different dates between January 19, 1970 and September 29, 1970 mostly at the Parkway Motel in Elmsford, New York using the name Mr. and Mrs. L. Lewis. The respondent's reply was "I don't recall."

EXHIBIT 2 TO LORENZO AFFIDAVIT-MEMORANDUM OF DECISION, FINDINGS
OF FACT AND RECOMMENDATION OF DEPUTY COMMISSIONER S. J. JTMAN

9a

Memorandum

The Department produced a handwriting expert who examined the motel registration cards and department records which contained respondent's signature and handwriting. It was his opinion that the respondent signed the cards. Where block letters were used, the expert testified that the respondent made them. Respondent did not offer any proof to show that the cards were not in his handwriting.

The respondent conceded that he had made a statement to the New York State Police that he had been at a motel with Mrs. Shapiro on September 21, 1971 the day of the homicide but contends that statement was made under pressure.

The respondent was separated from his wife for three years prior to the date of these specifications which are dated August 16, 1971.

During the course of this investigation, it was also disclosed that the respondent had a newspaper delivery service and had not obtained permission from the Police Commissioner to engage in this employment. It was also disclosed that he had registered a motor vehicle in the State of New Jersey when actually he was not a resident of that state.

FINDINGS

I find that the statements of the respondent that he could not recall whether he had registered at a motel with Mrs. Shapiro on 27 occasions were evasive and false.

EXHIBIT 2 TO LORENZO AFFIDAVIT-MEMORANDUM OF DECISION, FINDINGS
OF FACT AND RECOMMENDATION OF DEPUTY COMMISSIONER STUTMAN

10a

Memorandum

I find that his original statement to the State Police that he had cohabited with Mrs. Shapiro on September 21, 1967 was true.

The respondent was married at the time that he had relations with a married woman on numerous occasions.

There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro but apparently there is no proof that he was responsible for his death.

I find the respondent NOT GUILTY of Specification No. 3, and GUILTY of Specifications Nos. 1, 2, 4 and 5.

The respondent has 7 years of service in the department without any prior record.

RECOMMENDATION

I recommend that the respondent be DISMISSED from the Police Service of the City of New York.

s/ Louis L. Stutman
Louis L. Stutman,
Deputy Commissioner
In Charge of Trials

LLS:jbh

EXHIBIT 2 TO LORENZO AFFIDAVIT-MEMORANDUM OF DECISION, FINDINGS
OF FACT AND RECOMMENDATION OF DEPUTY COMMISSIONER STUTMAN

8

been at a motel with Mrs. Shapiro on September 21, 1971 the day of the homicide but contends that statement was made under pressure.

The respondent was separated from his wife for three years prior to the date of these specifications which are dated August 16, 1971.

During the course of this investigation, it was also disclosed that the respondent had a newspaper delivery service and had not obtained permission from the Police Commissioner to engage in this employment. It was also disclosed that he had registered a motor vehicle in the State of New Jersey when actually he was not a resident of that state.

Findings

I find that the statements of the respondent that he could not recall whether he had registered at a motel with Mrs. Shapiro on 27 occasions were evasive and false.

I find that his original statement to the State Police that he had cohabited with Mrs. Shapiro on September 21, 1970 was true.

The respondent was married at the time that he had relations with a married woman on numerous occasions.

There is an obvious suspicion that the respondent was involved in the homicide of Dr. Shapiro but apparently there is no proof that he was responsible for his death.

I find the respondent NOT GUILTY of Specification No. 3, and GUILTY of Specifications Nos. 1, 2, 4 and 5.

EXHIBIT 3 TO LORENZO AFFIDAVIT-FINAL ORDER OF DISMISSAL

11a

APPENDIX III
FINAL ORDER OF DISMISSAL

THE CITY OF NEW YORK
POLICE DEPARTMENT
NEW YORK, N.Y. 10013

November 9, 1972

In the Matter of the Disciplinary Proceedings

-against-

**FINAL ORDER
OF DISMISSAL**

Ptl. George Hanzimanolis
Shield No. 12732, 26th Pct.

Ptl. George Hanzimanolis, Shield No. 12732, 26th Precinct, having been duly served with written notice, has been tried on written charges and specifications numbered 45339 as set forth on form P.D. 468-121 dated August 9, 1971 and after a review of the entire record, has been found guilty of specifications one, two, four and five and not guilty of specification three. Now, therefore, pursuant to the powers vested in me by Section 434a-14.0 of the Administrative Code of the City of New York, I hereby dismiss Patrolman George Hanzimanolis from the Police Service of the City of New York.

s/ Patrick v. Murphy
PATRICK V. MURPHY
POLICE COMMISSIONER

EXHIBIT 4 TO LORENZO AFFIDAVIT-PLAINTIFF'S AMENDED COMPLAINT

(REPRODUCED HEREIN AT PAGE 3)

SUPPLEMENTAL AFFIDAVIT OF SAMUEL LORENZO FOR PLAINTIFF
IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE HANZIMANOLIS,

Plaintiff,

-against-

MICHAEL J. CODD, as Police
Commissioner of the City of
New York,

Defendant.

SUPPLEMENTAL AFFIDAVIT IN
OPPOSITION TO MOTION TO
DISMISS

-----X
STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

SAMUEL LORENZO, being duly sworn, deposes and says:

That I am the attorney for the plaintiff herein, and make this supplemental affidavit in opposition to motion to dismiss, pursuant to the Court's request, that your deponent address himself to the questions of whether or not the specific allegations of Constitutional violations have already been decided in the previous actions and proceedings between the parties.

In the present action, plaintiff contends that the Police Department and the Trial Commissioner acted in bad faith and merely used the charges against the plaintiff as a vehicle to dismiss the plaintiff from the Police force. Plaintiff, in this action, contends that his Due Process and other Constitutional rights were violated because of the bad faith of the members of the Police Department.

In all of the other actions and proceedings, the Constitutional questions raised, were ones of Procedure. Plaintiff merely attacked the Procedures followed at the hearing. He could not raise any other questions such as bad faith, because that would

SUPPLEMENTAL AFFIDAVIT OF SAMUEL LORENZO FOR PLAINTIFF
IN OPPOSITION

require a completely separate hearing or trial in which to introduce evidence of such bad faith. No such hearing or trial was or could have been available in the Article 78 and subsequent proceedings, to introduce such evidence.

The questions presented in the prior proceedings are before the Court and various previous memorandums and briefs, will be available to the Court on the return date of this motion, so that the Court can examine for themselves exactly what questions were presented in the previous proceedings.

Your deponent is fully aware that it is extremely difficult to prove bad faith in this type of case. I do not wish to try my case in this motion. Your deponent believes that it can be proven that the Police Department, acted in bad faith. If your deponent fails to do so, plaintiff will be non-suited.

Your deponent emphatically suggests to the Court that plaintiff be permitted his day in Court, on the allegations contained in the within Complaint. This is his first opportunity to do so.

WHEREFORE, your deponent respectfully requests that the within motion be denied.

Sworn to before me this 17th
day of October, 1975.

S. Samuel Lorenzo

SAMUEL LORENZO

TO: CLERK OF THE COURT

W. BERNARD RICHLAND, Esq.
Attorney for Defendant
Municipal Building
New York, New York 10007

ORDER AND OPIONION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

----- x
 :
 GEORGE HANZIMANOLIS,

Plaintiff, :
 :

-against- :
 :

MICHAEL J. CODD, as Police Commissioner
 of the City of New York, :

Defendant. :
 ----- x

75 Civil 1011

OPINION

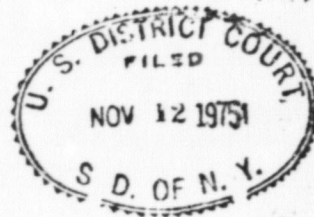
SAMUEL LORENZO, ESQ.
 401 Broadway
 New York, New York

Attorney for Plaintiff

W. BERNARD RICHLAND, ESQ.
 Corporation Counsel of the City of New York
 Municipal Building
 New York, New York

Attorney for Defendant

KATHLEEN CASEY
 Assistant Corporation Counsel
 Of Counsel



ORDER AND OPIONION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

EDWARD WEINFELD, D. J.

Plaintiff, a former policeman of the New York City Police Department who was dismissed following a hearing upon specific charges of misconduct, commenced this action against the defendant Police Commissioner to compel his reinstatement. He alleges a claim of deprivation of his constitutional rights under the Civil Rights Act, 42 U.S.C., sections 1983 and 1985, with jurisdiction grounded on 28 U.S.C., sections 1343, 1331 and 1332. The defendant moves pursuant to Rule 12 of the Federal Rules of Civil Procedure for an order dismissing the complaint on the ground that it is barred by the doctrine of res judicata and/or collateral estoppel.

In August 1971 specifications of charges were served upon plaintiff for violation of Police Department Rules and Procedures. He was charged with (1) "moonlighting," (2) wrongfully registering his car in New Jersey, using an address other than his own; (3) making false statements during an official homicide investigation; (4) cohabitating with a married female, not his wife; and (5) giving evasive answers during an official department interview. After a departmental public hearing before a Deputy Com-

ORDER AND OPINION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

missioner, at which plaintiff was represented by counsel, the Deputy found plaintiff guilty of charges 1, 2, 4 and 5, and not guilty of charge 3, and recommended plaintiff's dismissal. The Police Commissioner, after a review of the entire record, dismissed plaintiff from the Police Department.

Plaintiff then instituted an Article 78 proceeding in the New York State Supreme Court to review the Police Commissioner's determination. This proceeding was referred to the Appellate Division, (1) which affirmed the determination without opinion on October 9, 1973. Plaintiff then appealed as of right to the New York State Court of Appeals, which dismissed the appeal on January 9, 1974. Plaintiff thereafter sought leave to appeal to the Court of Appeals, but this application was denied by both the Appellate Division and the New York State Court of Appeals, without opinion. Finally, plaintiff petitioned the Supreme Court of the United States for a writ of certiorari, which was denied on November 11, 1974.

Then plaintiff commenced this action, in which he alleges that defendant deprived him of his constitutional

(1) N.Y.C.P.L.R. § 7804(g).

ORDER AND OPIONION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

rights under the Fifth, Eighth and Fourteenth Amendments. The nub of his constitutional claim, however variously alleged in his complaint, is that the five specifications of charges, four of which, as noted, were upheld by the Hearing Officer, were "minor infractions" of the Police Department Rules; that these charges were used as a "subterfuge, a deception and artificial justification" for his discharge, whereas "in fact [he] was discharged . . . because the Police Department suspected he was involved in the homicide of Dr. Shapiro"; and that "by trying [him] in a Departmental Hearing for the homicide without charging him with the same," the Department deprived him of due process of law.

Plaintiff seeks to support this charge of devious conduct by the police authorities by reference to what he terms a finding by the Hearing Officer that "there is an obvious suspicion that the [plaintiff] was involved in the homicide of Dr. Sapiro, but apparently there is no proof that he was responsible." Seizing upon this language, plaintiff alleges that although he was never charged with the homicide, this was a "specific finding by the Deputy Commissioner . . . finding him 'suspicious' of

ORDER AND OPIONION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

the death of Dr. Shapiro"; further, plaintiff alleges he was in fact tried and found guilty of that homicide, and that this, and not the formal charges, which were upheld, was the real reason for his dismissal.

Plaintiff's interpretation of the language as a specific finding that he was guilty of suspicion, and his allegation that he was found guilty of the homicide distorts the record. There is no finding, as plaintiff alleges, that he was guilty of suspicion or that he was guilty of the homicide. The reference to Dr. Shapiro's death was natural since one of the charges which was upheld was that plaintiff had made a false statement of his relations with Mrs. Shapiro. The statement upon which plaintiff relies is information submitted by the Hearing Officer to the Commissioner and, if anything, tends to exonerate plaintiff of any implication in the homicide. It in no way affects the specific and enumerated findings that petitioner was guilty of charges 1, 2, 4 and 5. Plaintiff's description of the five specifications of violation of Police Department Rules as "minor offenses" is hardly accurate. The giving of false and evasive answers in the course of an official department investigation would be,

ORDER AND OPINION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

under New York law, sufficient, in and of itself, to war-
rant dismissal from the New York City Police Department. (2)
However, the court does not pass upon the merits of plain-
tiff's contentions with respect to his interpretation of
what he describes as a finding, or his view that the
specifications are "minor offenses."

The question before this court on defendant's
motion to dismiss the complaint is whether plaintiff is
foreclosed, under the doctrine of res judicata, from re-
litigating the alleged violation of his constitutional
right by his presentation of the same issue before the
state courts. A reading of the record of proceedings there
compels the conclusion that the very constitutional issues
now tendered by plaintiff's complaint were at issue there
and ruled upon adversely to him.

Our Court of Appeals recently held in Lombard v.
Board of Education that "where a constitutional issue is
actually raised in the state court, as it can be in an
Article 78 proceeding . . . the litigant has made his
choice and may not have two bites at the cherry." (3) And

(2) See Matter of Donnelly v. Police Department, 40 A.D.2d
649 (1st Dep't 1972).

(3) 502 F.2d 631, 636-37 (2d Cir. 1974).

ORDER AND OPINION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

this is precisely the situation here.

Plaintiff, in an Article 78 proceeding commenced upon his discharge, presented to the Appellate Division, the Court of Appeals, and in his petition for certiorari to the Supreme Court of the United States to every issues alleged in his complaint in this action. Thus the typical claim in each court was:

"THAT BY MAKING A FINDING THAT THE PETITIONER WAS GUILTY OF 'SUSPICION THAT THE RESPONDENT WAS INVOLVED IN THE HOMICIDE OF DR. SHAPIRO', ALTHOUGH THE PETITIONER WAS NOT CHARGED WITH SAME, WAS A VIOLATION OF THE PETITIONER'S DUE PROCESS RIGHTS OF THE UNITED STATES CONSTITUTION AND NEW YORK STATE CONSTITUTION"

"THAT THE FINDING OF THE DEPARTMENT, THAT PETITIONER WAS GUILTY OF 'SUSPICION THAT THE RESPONDENT WAS INVOLVED IN THE HOMICIDE OF DR. SHAPIRO' WAS A FURTHER VIOLATION OF THE PETITIONER'S DUE PROCESS RIGHTS UNDER THE UNITED STATES CONSTITUTION AND NEW YORK STATE CONSTITUTION IN THAT MERE 'SUSPICION' DOES NOT AND CANNOT FORM THE BASIS OF AN INFRACTION, OFFENSE OR CRIME."

From the foregoing it is beyond challenge that plaintiff raised and litigated at every stage of his state court proceeding the very constitutional issue he now seeks to have adjudicated in this court. He may not relitigate

ORDER AND OPIONION OF WEINFELD, J., GRANTING
DEFENDANT'S MOTION TO DISMISS COMPLAINT

the very same issue in this court by asserting a claim under the Civil Rights Act. As the Court of Appeals (4) stated in Thistlethwaite v. City of New York, that Act was not intended by Congress "to foster career litigants." Thus the court there held that when a constitutional question raised under 42 U.S.C., section 1983 has been "at issue and determined against the [plaintiff] in the state action," (5) it cannot be relitigated in a federal court. To allow the maintenance of this action would not only mean a duplication of the state process, but render the doctrine of res judicata and its counterpart, collateral estoppel, meaningless.

The defendant's motion to dismiss the complaint is granted.

Dated: New York, N. Y.
November 12, 1975

EDWARD WEINFELD
United States District Judge

(4) 497 F.2d 339, 442 (2d Cir. 1974).

(5) Id. 342.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE HANZIMANOLIS,

Plaintiff,

-against-

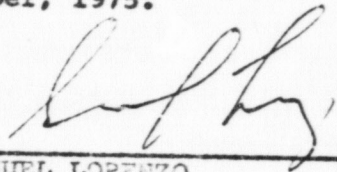
MICHAEL J. CODD, as Police Commissioner
of the City of New York,

Defendant.
-----X

NOTICE OF APPEAL

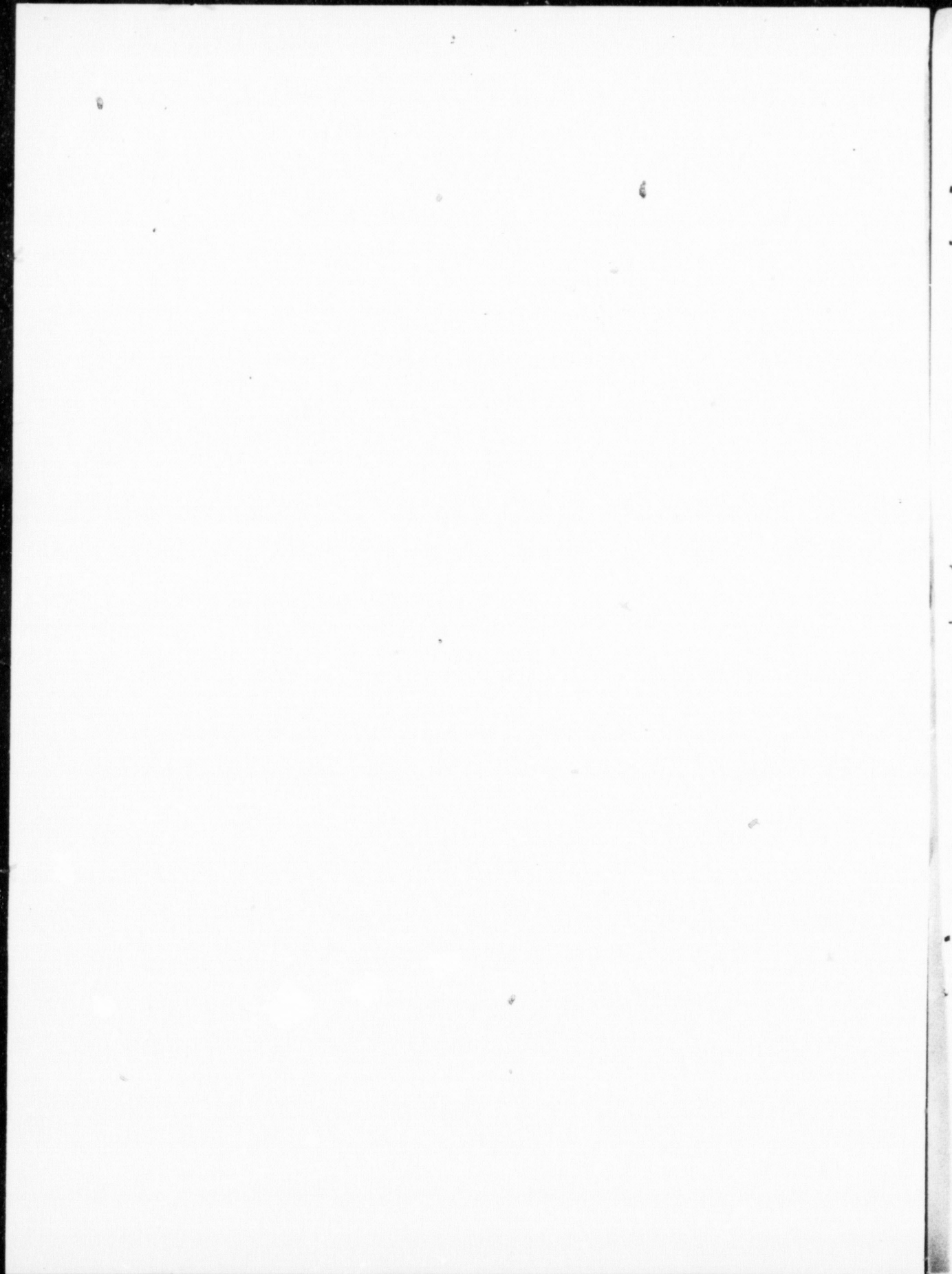
75 CIV 1011

Notice is hereby given that GEORGE HANZIMANOLIS,
plaintiff above named, hereby appeals to the United States Court
of Appeals for the Second Circuit from the order of HON. EDWARD
WEINFELD, dismissing ^{PLAINTIFF'S} ~~defendant's~~ complaint herein, entered in
this action on the 17th day of November, 1975.



SAMUEL LORENZO
Attorney for GEORGE HANZIMANOLIS,
Plaintiff
401 Broadway
New York, New York 10013
Canal 6-6171

W. BERNARD RICHLAND, ESQ.
Corporation Counsel of the City of New York
Attorney for Defendant, MICHAEL J. CODD, et al
Municipal Building
New York, New York 10007



STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JEFF ELYSHEVITZ, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 90-19 88th AVE.
WOODHAVEN, N.Y.

That on the 20th day of FEBRUARY, 1976,
deponent personally served the within APPENDIX

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copies of same with a duly
authorized person at their designated office.

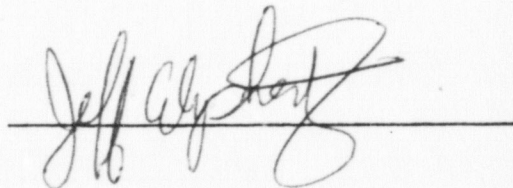
~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

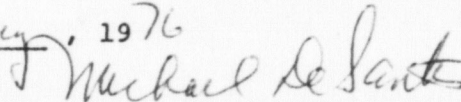
Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

W. BERNARD RICHLAND
CORPORATION COUNSEL
ATTORNEY FOR DEFENDANT-APPELEE
MUNICIPAL BUILDING
NEW YORK, N.Y. 10007

Sworn to before me this

20th day of February, 1976





MICHAEL DeSANTIS
Notary Public, State of New York
No. 93-0038008
Qualified in Bronx County
Commission Expires March 30, 1977